clearly established the fact that they do not permit the earning of a fair rate of return, such rates will be declared confiscatory, *Northern Pac. Ry. Co.* v. *Keyes,* 91 Fed. 47. A fortiori, therefore, should rates which have been shown by experience inadequate to cover operating expenses, be held to violate the constitutional prohibition, as in the present case. The Commission however, sought to avoid this by showing that the lines of complainant had been extended after the passing of the order into undeveloped territory. Plants unnecessarily large cannot be expected to be allowed to earn a return on the entire investment, *Boise City I. & L. Co.* v. *Clark,* 131 Fed. 415. It is noteworthy that the court distinguished such cases from the present case in that in this one the question was not whether any return should be allowed on such investment, but whether the road should be allowed to earn operating expenses on such portion.

CHARITIES—CHARITABLE BEQUEST.—A testator bequeathed $5,000 to trustees in trust to erect a bronze and granite base for a flagstaff in a city park, the same to bear an inscription that it was in memory of testator's father. Upon a bill brought to construe the will it was *held,* that the bequest was not within any definition of a charitable use, nor a devotion of the money to charitable purposes, but a mere private trust, violative of the rule against perpetuities. *Morristown Trust Co.* v. *Mayor of Morristown,* (N. J. 1914) 91 Atl. 736.

In arriving at this conclusion the court adopts the definition of a charity as formulated by GRANT, J., in the leading case of *Jackson* v. *Phillips,* 96 Mass. 539. The principal case is undoubtedly correct in its decision. What is a charitable use would seem to be a question of little difficulty in the light of the well settled definitions previously established. However, testators often attempt to do strange things. Trusts that have been held valid as devoted to a charitable use vary from a gift to purchase a fire-engine for a town, *Magill* v. *Brown,* Brightly, 411, to one for the increase and encouragement of good servants, *Loscombe* v. *Winteringham,* 13 Beav. 87. Provisions for the erection of monuments over the testator's grave have been upheld as being for a humane purpose, *Ford* v. *Ford's Ex'r,* 91 Ky. 572; *Detmiller* v. *Hartman,* 37 N. J. Eq. 347; *McIlvain* v. *Hockaday,* 36 Tex. Civ. App. 1, but a provision directing all the income from the testator's estate to be used for the erection of bronze statues of himself and family, about the premises, was held not to be an educational or charitable bequest. *McCaig* v. *University of Glasgow* [1907] S. C. 231. A case seemingly in conflict with the preceding and the principal case is *Smith's Estate,* 181 Pa. 109, where the court upheld, as a good charitable use, a gift of $500,000 to be used in erecting a memorial monument in a public park, inscribed with testator's name and adorned with statues of himself and others, on the ground that the monument was for the beautifying and adornment of the city as well as the elevation and refinement of the people.

CONSTITUTIONAL LAW—AUTHORITY OF PRESIDENT TO WITHDRAW MINERAL LANDS FROM ENTRY.—The President of the United States "in aid of proposed legislation" withdrew from entry 3,000,000 acres of oil land in 1909. In 1910

defendants entered on lands so withdrawn and started mining operations under the authority of the Federal statutes, and the United States now seek to enjoin mining operations. *Held*, Art. 4 § 3 of the Constitution gives Congress the exclusive right to dispose of public lands and though public officials may have the right in some cases to make a valid withdrawal, no adjudicated case is broad enough to justify such a large withdrawal, which in effect suspends the operation of the mineral laws. *United States* v. *Midway Northern Oil Co.* (D. C. 1914) 216 Fed. 802.

As a general rule the provision of the Constitution vests in Congress power over public lands "without limitation," *U. S.* v. *Gratiot*, 14 Pet. 526; *Van Brocklin* v. *State*, 117 U. S. 151; *Wisconsin R. R. Co.* v. *County*, 133 U. S. 496. But in two classes of cases withdrawals of public lands by the executive though not authorized by Congress, have been upheld, (1) where the lands prior to the withdrawal were being used for a public purpose, *Grisar* v. *McDowell*, 6 Wall. 363; (2) where the withdrawal was justified on the ground of effectuating some law in force at the time of the withdrawal, *Wolcott* v. *DesMoines Co.*, 5 Wall. 681. No executive officer has such general power, *So. Pac. R. R. Co.* v. *Bell*, 183 U. S. 675; *Brandon* v. *Ord*, 211 U. S. 11; *Osborn* v. *Forsythe*, 216 U. S. 571. Cases which have upheld the power have been cases in which comparatively small interests were involved, and the court in the present case was justified in holding that such a large withdrawal should have a positive and definite power to justify it.

CONSTITUTIONAL LAW—DOUBLE PUNISHMENT.—Plaintiffs in error were convicted on certain counts charging conspiracy to commit an offense against the United States in violation of § 5440 of the Revised Statutes, the offense consisting of the interstate transportation of explosives, and on certain other counts charging the aiding and abetting in the commission of offenses in such transportation of explosives in violation of §§ 232-235 of the Criminal Code; and were sentenced to distinct terms of imprisonment on both charges. *Held*, that the sentences so imposed do not constitute double punishment for the same offense. *Ryan* v. *United States*, (C. C. A. 7th Circuit, 1914), 216 Fed. 13.

§ 5440 requires for the completion of the crime of conspiracy an overt act by one or more of the conspirators. *Hyde* v. *United States*, 225 U. S. 347. The overt acts averred in the principal case were the sending of letters, and other acts apart from the actual carriage of explosives; therefore, proof of the crime charged under the "transportation counts" would not be necessary to make out the crime of conspiracy, nor would proof of the conspiracy be necessary to convict the separate defendants of the crime of transporting explosives. The decision is therefore clearly sustained, as against the contention of double punishment for the same offense, under the test approved in *Gavieres* v. *United States*, 220 U. S. 338, that the offenses are not identical, unless the evidence required to support a conviction on one charge would have been sufficient to warrant a conviction on the other. This rule has been variously stated. *Burton* v. *United States*, 202 U. S. 344, 381; *Wilson* v. *State*, 24 Conn. 57; *Morey* v. *Com.*, 108 Mass. 433; *Carter* v.